

# **BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA**

<b>IN THE MATTER OF THE PETITION FOR AN</b>	<b>)</b>	<b>ORDER GRANTING</b>
<b>ORDER DIRECTING U S WEST</b>	<b>)</b>	<b>CONTINUANCE; SECOND</b>
<b>COMMUNICATIONS, INC. TO FILE UPDATES</b>	<b>)</b>	<b>AMENDED ORDER FOR</b>
<b>TO ITS EXCHANGE AND NETWORK</b>	<b>)</b>	<b>AND NOTICE OF HEARING</b>
<b>SERVICES CATALOG, ACCESS SERVICE</b>	<b>)</b>	
<b>CATALOG, ADVANCED COMMUNICATIONS</b>	<b>)</b>	<b>TC98-187</b>
<b>SERVICES CATALOG AND PRIVATE LINE</b>	<b>)</b>	
<b>TRANSPORT SERVICES CATALOG</b>	<b>)</b>	

On October 26, 1998, the Public Utilities Commission (Commission) received a petition from Commission Staff requesting the Commission issue an order requiring U S WEST Communications, Inc. (U S WEST) to file updates to its Exchange and Network Services Catalog, Access Service Catalog, Advanced Communications Services Catalog and Private Line Transport Services Catalog. On November 3, 1998, the Commission received from U S WEST an Affidavit of Colleen Sevold concerning Staff's Petition. Ms. Sevold stated that the fully competitive catalog pages are available on the Internet.

At its November 3, 1998, meeting, the Commission considered the petition. After listening to the arguments presented by Staff and U S WEST, the Commission voted unanimously to set the matter for hearing.

The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-31, specifically 1-26-17.1, 1-26-18, 1-26-19, 1-26-19.1, 49-31-1.1, 49-31-1.2, 49-31-1.3, 49-31-1.4, 49-31-2, 49-31-3, 49-31-3.2, 49-31-3.3, 49-31-3.4, 49-31-4, 49-31-5, 49-31-7, 49-31-7.1, 49-31-11, 49-31-12, 49-31-12.1, 49-31-12.2, 49-31-12.3, 49-31-12.4, 49-31-12.5, 49-31-19, 49-31-38, 49-31-38.1, 49-31-76, and 49-31-84 and ARSD 20:10:24:02 and 20:10:32:03. The Commission may rely upon any or all of these or other laws of this state in making its determination.

The Commission issued an Order for and Notice of Hearing on February 18, 1999, stating that the issue at the hearing is whether U S WEST shall file updates to its Catalogs with the Commission and, if so, in what format. On February 24, 1999, the Commission received a letter from U S WEST requesting a more detailed and definite statement of the matters to be heard at the hearing. Based on this request, the Commission issued an Amended Order for and Notice of Hearing which stated that the hearing shall determine whether U S WEST shall file revised and updated tariffs in hard copy form or some type of electronic form when changes are made to fully competitive service offerings. The Commission limited the proceeding to fully competitive services based on Ms. Sevold's affidavit, referenced above, which states that U S WEST will continue to file tariff pages for noncompetitive and emerging competitive services.

On March 5, 1999, the Commission received a Deposition Subpoena and Subpoena to Produce Documents from U S WEST. On March 5, 1999, the Commission received a letter from U S WEST stating that Ms. Sevold's affidavit relied on by the Commission "no longer reflects the position of U S WEST." U S WEST went on to state that "U S WEST is or will be offering products designed to meet competition that are within the statutory classification of emerging competitive and noncompetitive services, and it is U S WEST's view that these competitive rate offerings do not have to be filed." On March 9, 1999, Commission Staff filed an Objection to Amended Order for and Notice of Hearing. On March 10, 1999, the Commission received a Motion for Continuance from U S WEST.

At its March 11, 1999, meeting, the Commission considered these matters. After listening to the arguments of the parties, the Commission voted to amend the Notice of Hearing in order to clarify the issues and to grant U S WEST's Motion for Continuance (Commissioner Nelson, dissenting). The parties came to an agreement on the Deposition Subpoena and Subpoena to

Produce Documents so the Motion to Quash became moot.

A hearing shall be held on April 27, 1999, at 9:30 a.m., in Room 412 of the State Capitol, 500 E. Capitol, Pierre, South Dakota. The issues at the hearing are whether U S WEST shall file changes to all of its catalogs or tariffs with the Commission and, if so, in what format; whether U S WEST has failed to properly file changes to its tariffs or catalogs, and if so, what is the remedy; whether product or service offerings designed to meet competition that are within the statutory classifications of fully competitive, emerging competitive, and noncompetitive services shall be filed with the Commission; and how is it determined whether product or service offerings are designed to meet competition.

The hearing is an adversary proceeding conducted pursuant to SDCL Chapter 1-26. All parties have the right to attend and represent themselves or be represented by an attorney. However, such rights and other due process rights shall be forfeited if not exercised at the hearing. If you or your representative fail to appear at the time and place set for the hearing, the Final Decision will be based solely on testimony and evidence provided, if any, during the hearing or a Final Decision may be issued by default pursuant to SDCL 1-26-20.

The Commission, after examining the evidence and hearing testimony presented by the parties, shall make Findings of Fact, Conclusions of Law, and a Final Decision. As a result of the hearing the Commission may require U S WEST to file changes to all of its catalogs or tariffs with the Commission in a particular format; may find that U S WEST has failed to properly file changes to its tariffs or catalogs, and if so, provide a remedy; may decide that product or service offerings designed to meet competition that are within the statutory classifications of fully competitive, emerging competitive, and noncompetitive services shall be filed with the Commission; and may decide how it is determined whether product or service offerings are designed to meet competition. The Final Decision made by the Commission may be appealed by the parties to the Circuit Court and the South Dakota Supreme Court as provided by law. It is therefore

ORDERED, that the Motion for Continuance is granted and therefore the hearing scheduled for March 16, 1999, is cancelled; and it is

FURTHER ORDERED that a hearing shall be held on issues as listed above at the time and place specified above.

Pursuant to the Americans with Disabilities Act, this hearing is being held in a physically accessible location. Please contact the Public Utilities Commission at 1-800-332-1782 at least 48 hours prior to the hearing if you have special needs so arrangements can be made to accommodate you.

Dated at Pierre, South Dakota, this 18th day of March, 1999.

<p align="center"><b>CERTIFICATE OF SERVICE</b></p> <p>The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.</p> <p>By: _____</p> <p>Date: _____</p> <p align="center">(OFFICIAL SEAL)</p>
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BY ORDER OF THE COMMISSION:

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JAMES A. BURG, Chairman

PAM NELSON, Commissioner, dissenting

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LASKA SCHOENFELDER, Commissioner

